

**City of Lafayette
City Council Special Meeting
Redevelopment Agency Special Meeting
MINUTES**

**Lafayette Community Center – Sequoia Room
500 St. Mary's Road, Lafayette, California**

**March 23, 2009
6:00 p.m.**

1. CALL TO ORDER

Mayor Tatzin called the meeting to order at 6:00 p.m.

2. ROLL CALL

Present: Council Members: Mayor Tatzin, Vice Mayor Andersson, Councilmembers Anderson and Federighi

Absent: Anduri

Staff: Steven Falk, City Manager; Ann Merideth, Community Development Director; Tony Coe, Engineering Services Manager; Mala Subramanian, City Attorney, Mary Beth Coburn, Attorney

3. ADOPTION OF AGENDA

ACTION: It was M/S/C (Federighi/Anderson) to adopt the agenda. Vote: 4-0-1 (Ayes: Tatzin Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

4. PUBLIC COMMENTS - None

5. CLOSED SESSION

A. Conference with Legal Counsel – Anticipated Litigation: Significant exposure to Litigation pursuant to Government Code section 54956.9(b) (1 Case)

6. ADJOURNMENT

ACTION: It was M/S/C (Andersson/Federighi) to adjourn to the Special City Council Meeting at 6:30 p.m. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

APPROVED:

Don Tatzin, Mayor

ATTEST:

Joanne Robbins, City Clerk

**City of Lafayette
City Council Special Meeting
Redevelopment Agency Special Meeting
MINUTES**

**Lafayette Community Center – Manzanita Room
500 St. Mary's Road, Lafayette, California**

**March 23, 2009
6:30 p.m.**

1. CALL TO ORDER

Mayor Tatzin called the meeting to order at 6:30 p.m.

2. ROLL CALL

Present: Council Members: Mayor Tatzin, Vice Mayor Andersson, Councilmembers Anderson and Federighi

Absent: Anduri

Staff: Steven Falk, City Manager; Tracy Robinson, Administrative Services Director; Ann Merideth, Community Development Director; Niroop Srivatsa, Planning & Building Services Manager; Tony Coe, Engineering Services Manager; Christine Sinnette, Senior Planner; Mala Subramanian, City Attorney, Joanne Robbins, City Clerk.

Environmental Task Force Members: Tom Chastain, Miya Muraki, Janet Thomas, Dick Holt, Steven Richard, Jon Love, Michele Perrault

Capital Projects Assessment Committee: Will Tissue, Ann Farrell Diemer; Gary Huisingh

3. PLEDGE OF ALLEGIANCE – led by Mayor Tatzin

4. PUBLIC COMMENTS – None

5. REPORT ON CLOSED SESSION

Mayor Tatzin said the Council had met in Closed Session and no reportable action was taken.

6. ADOPTION OF AGENDA

Mayor Tatzin noted Item 11.M. was added to the agenda after the posting of the agenda regarding the settlement agreement for the Lafayette Library and he asked to remove it from the Consent Calendar and move it to be heard earlier in the meeting.

City Clerk Robbins also requested that an additional item be added to the agenda and asked that it be considered by the City Council; a resolution of support for a local match for a Caltrans Community Based Transportation Planning grant application and the resolution must be adopted prior to submitting the application. Mayor Tatzin suggested this item be heard as Item 12.B.

ACTION: It was M/S/C (Anderson/Andersson) to add Item 12.B. to the agenda as an emergency item, as it arose after the posting of the agenda. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

ACTION: It was M/S/C (Anderson/Andersson) to approve the agenda, as amended. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

Convene Jointly with the Environmental Task Force and Capital Projects Assessment Committee

ACTION: It was M/S/C (Anderson/Andersson) to convene the joint session with Environmental Task Force and Capital Projects Assessment Committee. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

7. PRESENTATIONS

A. Environmental Task Force

Report on Goals and Accomplishments 2009

Recommendation: Approve proclamation and present.

Community Development Director Ann Merideth introduced Environmental Task Force Members present and said she will discuss the Climate Action Plan after members make their presentations.

Tom Chastain gave a presentation of the green building ordinance. He said Title 24 focuses primarily on energy use and other areas which can be accomplished through prescriptive standards or through performance standards. The green ordinance; however, focuses on a more comprehensive set of issues having to do with health, carbon footprint, materials, sustainability and energy. He discussed LEED as being an international system, includes accredited professionals, can be expensive and now is involved with homes. Build It Green which was adopted as a framework for residential, is a local checklist program from Alameda County and originally was developed to fill the gap LEED did not address. As a local system, it is more accessible and direct, and is less expensive, has a rating system and is more understandable and more easily accomplished by typical builders.

Mr. Chastain discussed residential, stating a new single family should achieve a green point rating which means 50 points. As homes grow larger, they should have a more efficient footprint. They have no incremental proposal but are proposing that as houses rise above 2,500 square feet, at a certain set of increments, must have a greater energy efficiency which would be measured against Title 24.

For projects involving single family remodels less than 800 square feet are proposed to be required to complete a checklist simply to become more aware of the energy efficient choices. Kitchen remodels and projects over 500 square feet the green point rating system should meet a minimum of 25 points. For projects over 50% of existing construction, Build It Green has a remodeling checklist and they are asking that those achieve 50 points. Multi-family has their own checklist for their green point rating. He presented samples of checklists from Build It Green and examples of ranges of achievable points, stating it provides education upfront for consumers and builders, and he presented a sample project in Palo Alto which achieved a total of 156 checklist points.

For new commercial construction, cost is a factor, and Build It Green does not have a commercial green point system. The task force proposes that for projects less than 5,000 square feet must submit a LEED checklist and for those greater than 5,000 square feet, they are asking builders to achieve LEED Silver status, but it assumes self-certification.

Regarding implementation, where certification is required a green rater must be contacted who verifies the project checklist and the project during its construction, and the rater would verify the green points have been achieved. The cost for Build It Green to applicants is not significant; \$400 for single family residences and verification is \$700 to \$1500 per new home. He said there are more people doing this work; they want to see how this affects cost. The cost for LEED is considerably more, which is a reason they are looking at a self-certification process.

Finally, he said the proposal would require that the City make information available; part of it is allowing people to understand choices available to them. This does place costs on someone wanting to remodel, but for green rating it is reasonable and for commercial, it would involve self-certification.

Councilmember Andersson questioned what city personnel would potentially become green raters, and Mr. Chastain said Build It Green trains people and some towns have developed their own set of raters and have sent them to the required training, such as Santa Rosa.

Councilmember Federighi questioned how the proposed ordinance compared to other city ordinances in terms of the number of points required and other factors. Task force member Miya Muraki said 50 point rating varies; some lower and some higher with one to two year voluntary periods. If the ordinance was to be passed, they would suggest that the 50 point requirement initially be implemented as a six-month voluntary program, and thereafter, become mandatory with the possibility of increasing the minimum checklist score. Mr. Chastain discussed another process which was not looked upon favorably upon, said some cities are becoming stricter with both Build It Green and LEED point minimums, and he thinks the threshold is reasonable to start at 50 points.

Task Force member Janet Thomas said there are a number of individuals in Lafayette concerns with local food and issues relating to their transportation. She said they have been meeting with 25 active subcommittee members and their goal is to encourage and facilitate the eating, growing, and learning about the values of sustainably-grown local foods in Lafayette and the surrounding community, and to foster a sense of community and sharing. She said four areas of interest include:

- 1) Waste. They would like to find a way to share food;
- 2) Having a farmer's market in town. There has been mixed feelings from food stores, they are still in the planning stages, they discussed the subject with the Chamber of Commerce, they have looked at a number of sites for Saturdays, as Moraga has a farmer's market on Sundays, they are in the process of how to allow local residents to be able to sell their products at a local farmer's market, and a Merrywood Preschool Garden Coordinator has voiced interest in managing the farmer's market.
- 3) Having a Lafayette Community Garden. Many people are very interested in this where people could grow their own fruits and vegetables and share them once a week. There is an active group of approximately 50 people in Moraga currently doing this, they have looked at about 10-11 potential sites, and they are looking into water, electricity, traffic considerations.

- 4) Community-Supported Agricultural Farm (CSA). They are currently looking at a local area where people could sign up and have food delivered to their homes or pick it up on a regular basis.

Steve Richard said the Green Awards Program and Earth Day festival are both joint ventures with Sustainable Lafayette, which started two years ago and did not exist when the task force was started, but has since grown dramatically. There are almost 500 members in town, a monthly newsletter, an active website, a Board of Directors, and a dozen projects underway. He said they have become a very potent partner to work with the task force in pursuing the City's environmental goals. They are holding the event again, have a new set of nominees, and at the last task force meeting they were choosing winners. He discussed how Sustainable Lafayette collected nominations on its website, forwarded them to Ms. Merideth, and the Task Force was then acting as judges and the awarders. Any program that can make it to the second year has the chance of becoming permanent, they receive a lot for very little effort, and discussed their displays, posting of winners on their website, the Lamorinda Weekly did a big article, and winners were able to celebrate and advertise personally of their green award achievements.

He noted flyers were available for the City's April Earth Day, it is the 4th annual Earth Day for Lafayette, he discussed the Chamber's initial work on it and work thereafter by the Task Force, and said this year festival is the most ambitious he has experienced. He said that he, Janet Thomas, Bart Carr, at least 6-8 volunteers from Sustainable Lafayette, some from Sustainable Moraga and some Chamber of Commerce Green Committee members involved with the event. He discussed various themes for Lafayette, and noted this year's theme is "Going Local" and they have almost 60 organizations signed up, speakers, musicians, videos and food, conveyed that Sustainable Lafayette is becoming a perfect and complimentary partner with the City, and the totality of organizations and volunteerism will work to achieve the City's Climate Action Plan.

Councilmember Anderson said he was pleased with last year's Green Award Program which was great and he said the Earth Day event sounds like it will be very successful.

Ms. Merideth said the Task Force prepared an expanded Environmental Strategy. The Council adopted the original strategy in 2006 which has been broadened to look at an entire range of issues that involve state and federal programs. Also a component of the Strategy will be a Climate Action Plan to reduce greenhouse gases in the community, as well as those items identified by the Task Force which will be incorporated into one document.

Councilmember Andersson said, as liaison to the Task Force, he complimented the members for their creative ideas and work efforts. Mayor Tatzin echoed comments and said he looks forward to all of the items coming together.

B. Capital Projects Assessment Committee
Report on Goals and Accomplishments 2009
Recommendation: Receive and file.

Engineering Services Manager Tony Coe introduced CPAC Chair Will Tissue and members Ann Farrell Diemer, and Gary Huisingh.

Chair Will Tissue said they recently held a meeting to review 2010 projects, noted there is approximately \$4.2 million total projected with \$2.1 million on local road improvements including drainage and parks, recreation and trail projects. This breaks into 4 road re-construction projects and 3 pavement management projects, and 6 or 7 other drainage and parks and trails projects.

In 2009, Mr. Tissue reported that it is anticipated that project bids are coming in lower and discussed bids received and potential additional projects, which would be reflective on future Council agendas. CPAC recommends to the Council that the \$400,000 Waste Management impact monies coming in be dedicated to road repairs. Over the last two years, the City's Pavement Management program was reduced and some reconstruction work was done. They would like to see this return to the maintenance program before too long so they do not incur further impact and fall under the failed roads category.

In 2011, Mr. Tissue said they will start a decline in funding unless the RDA debt repayment and the Palos Colorados mitigation funds come forth. He said given monies available for projects through the end of the next 10 years, they will still come up about \$15 million short on projects to fix all of the roads. To date, when they finish 2009 projects, he said they will have completed 16 of the 118 projects on the list, leaving a substantial amount of work left. Unless there is an infusion of bond issue money or something else, the process will be slow after 2011.

Mr. Coe said subsequent to the CPAC meeting, members also held a meeting with the Road Funding Task Force regarding their proposal for 2010 capital program and projections moving beyond 2011. Regarding the potential savings they will have based upon lower bid prices, they agreed that after all bids are opened in April, staff would then assess the total amount of savings anticipated and return to CPAC and the Council with a list of options to be incorporated either into the current year capital program or in the 2010 program.

Vice Mayor Andersson questioned and confirmed that it was a matter of timing if it turns out that there are a number of surplus monies, as well as staff resources. Mr. Coe said after all bids are opened in April, construction work will proceed and staff will be managing construction work and it will be difficult to do project development work on a complicated project, such as the roadway reconstruction project. He intends to look at the future year project list which the Council has approved, identify which projects can be readily accelerated, but he would not expect a project that would require a lot of engineering, design and community input to occur in 2009 due to staffing and time constraints.

Councilmember Anderson said the City has been worried about the re-construction projects and maintenance, questioned if some money will still be in place to do them, as there are many people waiting for something to happen on their very bad streets, and he hoped this could be made possible. Mr. Coe said there is a small amount of room; the decision made was to scale back the maintenance program at a half-funded level to free up more money for the new construction program. CPAC's concern is that if the City does not get back to substantially funding the maintenance program, in addition to the failed road backlog they will start to develop a maintenance backlog. Beyond 2011, staff is looking at \$1.7-\$1.8 million worth of projects per year, with the availability of about \$500,000-\$700,000 to do failed road repair projects, which at that rate will take some time to address the entire list of failed roads. Nevertheless, the City will still be completing failed road repair projects annually.

Councilmember Anderson said having reduced bids is a great opportunity for the City, and he questioned whether staff has considered securing additional help to allow acceleration of a few more projects. Mr. Coe said he has; the Council recently approved a resolution to authorize a special process for awarding contracts related to the Stimulus money. Staff has taken advantage of this to meet federal requirements for about \$700,000 in projects using existing staff. He is concerned about stretching staff too thin, compromising work quality. He believes that money paid to consultants offsets in a substantive way any bid savings seen, and secondly, from a

practical standpoint, it takes a fair amount of planning and time to do a project well, especially one involving roadway reconstruction and a public process.

Councilmember Anderson said he was not sure the downturn was over in 2009, so it might be worthwhile to think about 2010, as well.

Public Comments:

GUY ATWOOD, Roads Task Force Member, echoed Councilmember Anderson's comments, added that additional funds may come through as part of waste grants in the amount of \$325,000 annually, and staff has identified saving approximately \$200,000 to \$300,000 for contracts which could equate to \$500,000 in projects that come up for bid. He suggested review of potential additional 2010 projects and using funds as quickly as possible. He said he will return to the Council with a report that shows that the City will receive Palos Colorados funds and should think about how to raise remaining funds for roads, feeling that 2011 would be a good start.

The Council thanked CPAC members for their report.

Adjourn joint session with Environmental Task Force and Capital Projects Assessment Committee

ACTION: It was M/S/C (Anderson/Federighi) to adjourn the joint session with Environmental Task Force and Capital Projects Assessment Committee. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

Convene Redevelopment Agency

Mayor Tatzin announced that Item 11.M. was removed from the Consent Calendar for discussion.

ACTION: It was M/S/C (Andersson/Anderson) to convene the Redevelopment Agency. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

11M. Settlement Agreement and General Release between the Lafayette Redevelopment Agency and C. Overaa & Co. For The Lafayette Library and Learning Center Project **Recommendation:** Authorize Chair to Execute Amendment.

Chair Tatzin reported that for a few weeks, the Council has been meeting in Closed Session regarding potential litigation. The City Manager and he have met with Mr. Overaa in an attempt to negotiate a settlement agreement and present the proposed agreement to the Agency. It calls for a date certain for the opening, an expedited procedure for resolving disputes, settling claims of known and unknown, and ultimately the cost of the settlement would be funded by the Redevelopment Agency above the cap, which would not take away over time from the amount of other RDA projects that could occur.

Executive Director Falk said there is good news as well as challenges relating to the Library; the Library is about 70% complete and they are on track for a Fall opening. Challenges include the fact that it is a complex building, the parking garage is being buried and offices and retail are being built around it with a library on the top. Overaa is familiar with the community, has experience managing construction; however, given the building's complexities, there will be challenges and the need for unexpected change orders. He said when a problem arises not laid out in the plans a contractor will issue a request for information. There have been more than 1200

requests on this project, and from those 1200, there have been over 300 change orders, and he briefly provided examples of change orders. Staff batched all change orders together and has formulated them into a settlement agreement which occurred during the first 70% of construction on the building and this was before the Agency this evening, which was done through negotiation and construction experience.

Mr. Falk said the settlement agreement would dissolve all change orders known to date and compensate Overaa and Co. for those in an amount of \$3.128 million, to be paid by the Lafayette Redevelopment Agency, and this represents about 7% of the total project cost of \$42 million and slightly over 10% of the contract costs the City has with Overaa and Co. Secondly, it would establish a schedule and a path to deliver the project substantially completed in mid-late September and which would be open to the public on November 14, 2009. He also noted that Jerry Overaa and Tim Fitzpatrick were both available and in attendance.

Agencymember Anderson said he was concerned about how the City can be assured that the City will have the substantial completion date met, which is yet to be determined. He noted there was no information about this in the agreement, and he asked to set aside a portion of the payment to be assured the deadline is met for a November 14th opening.

Agencymember Federighi proposed that a portion of the total amount, such as \$250,000, be withheld until they did reach substantial completion on or no later than October 1st.

Vice Chair Andersson said in negotiations, the agreement date of mid-November was proposed with the understanding that it would take an additional 6-8 weeks to get the library operational prior to the mid-November date.

Chair Tatzin referred to Exhibit A which would show the substantial completion would be "x". He expected that the entire agreement would not be effective until that Exhibit was produced and acceptable to both the contractor and the Agency. For the nature of discussion, the substantial completion date is in the middle to end of September, and allowing for 6-8 weeks for a moving process to occur. It also allows the contractor to continue to conduct warranty work, while simultaneous moving goes on and allows for everyone's accommodation, and the necessity for the contractor to work around temporary structures to allow this to occur.

Vice Chair Andersson questioned if there was a firm date for the moving process to take place, and Chair Tatzin said there would be a date contained in Exhibit A.

Agencymember Federighi said she was not sure whether there was any support for withholding a portion of funds if the substantial completion date is not met, and questioned if the total \$3.128 million would be withheld. Vice Chair Andersson noted the money is more substantial than he would like to see, but at the same time it is a negotiated number, but what is important to the City is to get the library open. There might be an incentive that would work to hold money until such time the date is met, or, imposing a penalty if the date is not met.

Agencymember Federighi said she would be agreeable to one or the other. Agencymember Anderson said he supports this, but the Agency has not seen the Exhibits, and what is really being proposed, which he supports, is authorizing the Executive Director and Chair to move forward with the agreement contingent upon issuing a reservation of funds or liquidated damages, or something that enforces a substantial completion date, which will come from Exhibit A.

City Attorney Mala Subramanian said a motion will need to be made, but Agencymembers could either authorize the withdrawal or withholding of the \$250,000 or liquidated damages in the

amount of "x", and provide a range to direct the Chair and Executive Director to finalize the settlement agreement with one of those two options.

Agencymember Federighi questioned and confirmed current liquidated damages were at the rate of \$5300, but do not kick in until the final completion. One of the options is having liquidated damages kick in at substantial completion if not met by a certain date, or the withholding of a set amount of money.

Chair Tatzin said Exhibit C is a minor item which needs to occur before any approval became effective. Ms. Subramanian said she also recommended taking a more finite look at the exhibit to address any minor ambiguities.

Chair Tatzin said at the end of discussions, they agreed that both parties would look at the exhibit to identify additional clean up work, and if the Agency moved forward, it could include those provisions.

Public Comments:

JIM BURNS questioned how much money was set aside to address change orders. Chair Tatzin said and Mr. Coe confirmed, there was a 10% contingency on the bid amount, which was about \$2.9 million, and this settlement figure slightly exceeds the contingency in the construction contract. Mr. Burns questioned if the amount was in addition to the \$2.9 million. Chair Tatzin said it roughly exceeds it by \$200,000, which Mr. Burns agreed was not substantial. Mr. Burns noted that given the work is 70% done and questioned if additional change orders would be incurred. Chair Tatzin said conceptually there may be more, but the nature of what causes a historical change order has been resolved and everybody agrees there should hopefully be no more change orders.

Councilmember Anderson suggested authorizing the Executive Director and Chair to work with Mr. Overaa on setting aside either a reserve of \$250,000 or establishing liquidating damages at the \$5300 rate which begins after the completion date as established in Exhibit A.

Agencymember Federighi asked that the date be no later than October 1, 2009, and Vice Chair Andersson agreed.

Chair Tatzin said throughout negotiations he gave a commitment that while the agreement is not perfect, it was one he agreed to support. He understands the nature of the issues raised, but he would not vote for a motion to amend it. He understood that in open session, the Agencymembers wanted to provide the Committee with some amount of flexibility, which could be breaking the \$3.128 million into two parts; the main part could start at \$250,000 which could be held in reserves until substantial completion has occurred and agreed upon.

Agencymember Anderson said this was the Agency's way of making sure that there is something that guarantees substantial completion at a specific date, and he agreed to make a motion to authorize a set aside reserve of \$250,000

ACTION: It was M/S/C (Anderson/Andersson) The Redevelopment Agency authorized the Chair or Executive Director to execute an amended Settlement Agreement and Exhibit A, upon review of the City Attorney, to set aside a reserve of \$250,000 from the \$3.128 million in the agreement until the substantial completion of the project, or set liquidated damages to begin at substantial

completion date of October 1, 2009 at \$5300 per day. Vote: 3-1-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: Tatzin; Absent: Anduri).

Adjourn Redevelopment Agency

ACTION: It was M/S/C (Andersson/Anderson) to adjourn the Redevelopment Agency. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

8. OLD BUSINESS

A. Niroop Srivatsa, Planning & Building Services Manager

Upgrading and Updating the City's Drainage Impact and Walkways Fees – a study approved in the 2008 and 2009 planning division work plans.

Recommendation: Accept the reports and authorize staff to schedule a public hearing in April.

Planning and Building Services Manager Niroop Srivatsa said one task from the Planning Division's work plan this year is a completion of a study to update and upgrade walkways and drainage impact fees. The City hired Seifel Consulting last year to begin the study. Ms. Seifel has completed the study and recommends increases to both fees. Currently, the walkway fees is \$50/unit which has not been updated since 1969. The drainage impact fee which was first adopted in 1985 is currently \$.10/square foot. She introduced Libby Seifel who would present the study.

Libby Seifel, Seifel Consulting, gave a PowerPoint presentation of updates to the Lafayette Drainage and Walkways Impact Fee programs, which have not been updated in a long time. As a result, they would be increasing. She presented background and progress to date and said AB 1600 is legislative requirement where in order to charge fees, cities must establish the purpose of each impact fee, use or improvement for which fee will be used, and the reasonable relationship or nexus between the need and amount of the fee attributable to new development.

Ms. Seifel presented the Drainage Fee background and purpose:

Current fee of \$0.10/SF of impervious surface added for drainage study;

\$15 million improvements needed (Master CIP Storm Drain Priority Report, Drainage Master Plan)

Updated Drainage fee would help defray a small part of the cost of City to provide drainage infrastructure to new development

She said a lot of time was spent on the methodology employed. They worked closely with staff in looking how much total developable land there is in Lafayette and then staff added every building permit over the last 7 to 8 years for non-residential development to look at the percentage of impervious surface. For residential development, they looked at all of the building permit records and also looked at residential additions. From analysis, they looked at what the typical impervious surface has been for a typical lot within the City. Based upon staff's recommendations, they reduced this amount of impervious surface by 10% to account for California Regional Water Quality Control Board's new standard which requires more landscaping and less impervious surface.

Councilmember Anderson questioned how this would affect the typical builder who is being required to plan for less impervious surfaces and questioned how the process worked. Ms. Seifel said first defined would be whether or not it was impervious surface or not, and then would there be any additional credit if they were providing an improvement that would be more favorable. Mr.

Coe said because of the way the nexus study is being done, to the extent that a project is mitigating itself by choosing innovative design measures to contain water within the site, staff has adequately allowed for this; and, if something like a concrete driveway is proposed, the City would charge the fee as in-lieu.

Ms. Seifel said in summary, she recommends a base drainage fee for new impervious surface added of \$0.54 versus the existing \$0.10, adding an administrative cost of 5% which would equate to \$0.03, for a total drainage fee/SF of impervious surface of \$0.57.

In summary, the proposed fee is linked to the identified drainage infrastructure improvement, there is no change in the fee basis, it ensures new residential and non-residential development pay fair share of drainage infrastructure costs, and the proposed fee for a typical single family home of 4,500 SF of impervious surface would cost \$2,565 per unit. She said this would typically include pools, driveways, sheds, homes and garages.

Ms. Seifel then presented the Walkways Fee background and purposes, stating currently the City has a program that has been in place for over 30 years at \$50/dwelling unit for offsite walkways improvements. She said it does not vary by size of unit, and one recommendation being proposed is to vary it by the size of the unit, and it also does not reflect the improvements needed in order to accomplish the Walkways Master Plan.

The calculation is different from the drainage fee because the nature of what is being proposed is different; it is more similar to parks. She said the first step is identifying the new residential development, we are not proposing an impact fee for non-residential development, but that non-residential development would mitigate its impact on an as-needed basis and they would provide the walkway in front of the unit or connections that might be needed to the walkway. So, it would be an individual mitigation for non-residential development, which is the way it is done currently. The second step would be to project future residential population, and thirdly, determine distribution of existing and future residential population.

They looked at the General Plan build-out, they made adjustments of what was actually built between 2003 through 2007 and took the amount remaining, made the deduction and identified how many units would remain through build-out which is projected to be 1,120 new residential units, and this is before the Downtown Specific Plan is taken into account. They then looked at how much residential population is attributable to existing development through 2008 and how much to future development, and about 8% is attributable to new development in the future, and 8% was applied against the \$10 million worth of walkway costs. The total fee range when administrative costs of 5% are added which equals about \$1141 for a typical single family detached home.

Councilmember Federighi questioned the inclusion of the all costs. She said the Master Walkways Plan is about \$7 million, but the Aqueduct Trails item is the one she questions. She thought that the Aqueduct Trail was an idea and the Council decided that it had to have a feasibility study before going any further with it, and there was a question about whether or not this would ever materialize.

Mr. Coe said the Aqueduct Trail is actually a living part of the adopted Bikeways Master Plan. For the purpose of the walkways fee, staff intentionally applied a percentage to the cost to reflect the pedestrian use of the trail. He said before implementing and designing the trail, staff will conduct a feasibility study. Councilmember Federighi said she believed it was difficult to accomplish due to safety issues and she wondered if it makes sense now to include this as a cost. Mr. Coe said

the Bikeway Master Plan envisions the Aqueduct Trail to be realized some day in some form. There are distinct points on the trail where there are design challenges such as crossings at different streets. The trail is large enough and usable segments could be constructed outside of the challenges and still make connections via other ways. This is why staff is recommending including the cost of the pedestrian component of the multi-purpose trail, but it was up to the Council's discretion if they felt otherwise. Ms. Srivatsa added that it is not the entire amount of \$7.5 million, but 40% of that.

Vice Mayor Andersson confirmed that regardless of where a unit is built, it contributes to the Citywide walkways program, and presumably some would be in the commercial district. He questioned that if the commercial development was going to provide some of the development of walkways in their immediate vicinity, he asked if this should be reflected as some reduction from the total. Mr. Coe said in looking at the project list for the Master Walkways Plan, a large majority, or over 90% of the projects may be near the downtown area and near commercial zones, but they actually occur on residential streets. Thus far, staff's experience with commercial projects has been for mitigation to occur along Mt. Diablo Boulevard. This cost does not reflect those projects on Mt. Diablo Boulevard, so in fact; the City would not be able to back out any costs.

Ms. Seifel said in summary, the proposed fee would be linked to the identified walkways improvements, understanding the Council's point about the aqueduct trail. Again, it would ensure that housing development pays its fair share, non-residential would continue to directly mitigate its impacts and the proposed fee would be \$1,141 for a single family home. She said there has not been a lot of new development in the past few years, she said the drainage fee is both for residential and non-residential, and the walkways fee is only for residential. The average number of units is 13 units per year at \$50/unit and the average impervious surface at 172,000 square feet and in looking forward, if Council adopts recommendations, the City would increase its average to about \$100,000 per year for the drainage fee and about \$15,000 for the walkways fee from new development. There are additions, which are another substantial feature for redevelopment and there would be impervious surface added to that, and at this point, because this would apply largely to existing homes, she did not actually assign a charge for additions for the walkways fee.

If Council were to agree with the recommendations, a public hearing would need to be held for first reading of an ordinance on April 13, 2009 and the second reading on April 27, 2009, and the ordinance would take effect 60 days thereafter.

Vice Mayor Andersson questioned and confirmed with Ms. Srivatsa that the money collected would be specified under a separate account and identified as walkways and drainage fee project funds.

Public Comments:

ANN BURNS cited the outstanding backlog of impacts on roads and she asked that anything extra be dedicated to the repair of roads.

Ms. Srivatsa said when Seifel Consulting completed its initial assessment in 2007; Ms. Seifel recommended the City consider a capital facilities fee. If the Council is interested in this, staff can schedule this discussion for the budget workshop.

Councilmember Anderson made a motion to accept the recommendation and authorize staff to schedule a public hearing on April 13, 2009. Mayor Tatzin recommended holding the first hearing on April 27, 2009 due to the Downtown Strategy Plan and budget items. Vice Mayor Andersson seconded the motion, and the Council held discussion.

Councilmember Federighi said she would not support including the \$3 million of the Aqueduct Trail as it may be part of the Bikeway Plan and it is not certain to be feasible. Mayor Tatzin suggested bifurcating the motion, and propose a motion regarding whether or not to include the Aqueduct Trail in the walkways fee calculation.

Councilmember Anderson made a motion to include this, as the alignment of the Aqueduct trail connects from Happy Valley and down at an angle toward the reservoir, portions of which will be built by development and other proposals from developers. He felt crossings for some of the streets will cost much more than \$7.5 million, but it is valid to provide a short cut or bypass to the western edge of town, the reservoir and points to the west.

Councilmember Federighi said she thought it was from Risa Road, going along the aqueduct, parallel to the freeway all the way to Brown Avenue. Mayor Tatzin said it does this too, but it also goes from Happy Valley Road to the reservoir. City Manager Falk noted that it would go from the Veterans Building to Brown Avenue.

Councilmember Anderson agreed there were pieces that could be done, staff has knocked it down to 40% of the \$7.5 million price, and if the roads and bridges were expanded, it would cost a lot of money. He therefore felt it was a reasonable number.

Vice Mayor Andersson said that while it may not be feasible in its entirety, a significant segment can be done, and particularly, the entire stretch will be available for bikeway. Councilmember Federighi said she will support the motion, as there are feasible portions of the trail.

ACTION: It was M/S/C (Anderson/Andersson) to include the Aqueduct Trail into the walkways fee calculation. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

ACTION: It was M/S/C (Anderson/Andersson) to accept the reports and authorize staff to schedule a public hearing on April 27, 2009. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

Mayor Tatzin suggested that at the budget discussion, it would be a good idea to talk about the topic of road impacts. Councilmember Anderson suggested a road impact fee. Ms. Seifel said there is this possibility, but the complication is that there is a Lamorinda Transportation fee so they would have to look at what improvements are city-specific versus region-specific.

Mr. Coe said the Council is not talking about a traffic impact fee, but more of a structural road maintenance impact fee, which goes to things like trucks where they impact the roads, and noted that a peninsula city recently implemented this. Ms. Seifel said an impact fee cannot be done for maintenance; it must clearly be related to new development. She was not sure it could be done but could review the peninsula city.

City Attorney Subramanian said there may be legal challenges for adopting impact fees for road maintenance or even for potentially new construction and road damage. Mayor Tatzin said when discussed at the April 13th meeting, he asked to identify challenges for roads where there is construction-related damage and the general topic of road impacts.

9. STAFF REPORTS

A. Ann Merideth, Community Development Director

Introduce Ordinance 582 regarding the SB 1045 amendment to the Lafayette Redevelopment Plan on the effectiveness and time limit to receive tax increment

Recommendation: Introduce Ordinance 582 and continue to April 13, 2009 for second reading and adoption.

Community Development Director Merideth said in 2003 the state legislature adopted SB 1045 which gave all redevelopment agencies an extra year to add on to the life of their projects. Staff was not aware of it previously, but now has a consultant to amend the Redevelopment Plan on some other items and they pointed this out to staff.

ACTION: It was M/S/C (Federighi/Anderson) to introduce Ordinance 582 and continue to April 13, 2009 for second reading and adoption. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

10. PUBLIC HEARINGS

A. Christine Sinnette, Senior Planner

Initiate Proceedings to Amend General Plan Map I-1 to reclassify four properties (APN 232-140-004, 232-140-010, 232-140-016, and 232-150-021) located on Deer Hill Road from Low Density Single Family Residential to Rural Residential Single Family and one property (232-140-014) on Deer Hill Road from Administrative/Professional/Office /Multifamily Residential to Rural Residential Single Family. The City may also consider initiating proceedings to amend General Plan Map I-1 to reclassify two properties (APN 232-150-027 and 232-150-028) located on Deer Hill and Pleasant Hill roads from Administrative/Professional/Office/Multifamily Residential to Rural Residential Single Family and/or Low Density Multifamily Residential. GP02-08, CITY OF LAFAYETTE (APPLICANT), ANNA MARIA DETTMER TRUST, MICHAEL & SARA KIM, ZBIGNIEW NAGLICKI LIVING TRUST, STATE OF CALIFORNIA (OWNERS)

Initiate Proceedings to change the zoning designation for four properties (APN 232-140-004, 232-140-010, 232-140-016, and 232-150-021) located on Deer Hill Road from R-20 to L-R-10 and one property on Deer Hill Road from APO to L-R-10. The City may also consider initiating proceedings to rezone two properties (APN 232-150-027 and 232-150-028) located on Deer Hill and Pleasant Hill roads from APO to L-R-10 and/or MRP and/or MRT.

RZ02-08, CITY OF LAFAYETTE (APPLICANT), ANNA MARIA DETTMER TRUST, MICHAEL & SARA KIM, ZBIGNIEW NAGLICKI LIVING TRUST, STATE OF CALIFORNIA (OWNERS)

Recommendation: Conduct the public hearing, consider the matter and direct staff to initiate proceedings to amend the General Plan and zoning designations by motion.

City Attorney Mala Subramanian said the Council last met on October 13, 2008 jointly with the Planning Commission at which time the Council directed staff to initiate a zoning change for five of the parcels to LR-10 and to work with the property owner of the two parcels that are designated APO on a development agreement and a specific plan and to return to the Council within 3 months and report on the status of discussions.

Since that time, staff has met with the property owner and her representatives three times. We, met in October after the Council meeting with Anna Maria Dettmer and her attorney to discuss a development agreement and a specific plan. At that time, they wanted the development

agreement to be on all four of their properties if it was to be considered and negotiated between parties and not just the two that are designated APO.

They again met in January with Ms. Dettmer's attorneys at which time they informed staff that there is a potential new developer who is purchasing the property; Reynolds and Brown, who is interested in acquiring the property from the Dettmer Trust and eventually developing it. They wanted to meet with staff and the Mayor, at which time a third meeting was held in February. They discussed potential development of the property and the possibility of an assisted living project on the property. At that time, staff exceeded the three-month status update and staff is now able to provide more details and asked how to further proceed.

Ms. Sinnette said prior to moving forward with the environmental review process for the five properties previously initiated for designation to LR-10 for, staff needs to determine what to do with two parcels on Pleasant Hill Road, which are Parcels 27 and 28. Parcel 27 is a 22 acre parcel on the corner that is above the highway and Parcel 28 is a smaller parcel where there used to be a former gas station.

During the previous General Plan hearings before the Council and Planning Commission, a number of other options were considered for the two properties which included LR-10, LR-5, R-20 and MRP and MRT, which are described in the staff report. Any of the designations could be considered by the Council based upon previous Council direction, as all are identified as residential in the Zoning Ordinance and review of the goals and policies for the Deer Hill area as identified in the General Plan.

Staff recommends the Council conduct a public hearing, consider the matter, and direct staff to initiate proceedings to amend the General Plan and Zoning designation.

Mayor Tatzin said he was reading through the minutes included in the packet regarding the October Council review. As he recalls, there were some suggestions that were inappropriate for the Council to act at that time, particularly on Parcels 27 and 28 because the General Plan called for a specific plan to be done for the area, but this did not preclude the Council from moving ahead with a rezoning. City Attorney Subramanian confirmed this was the case.

Mayor Tatzin said Parcel 27 has a lot of elevation difference, some of which is in the ridgeline setback. He questioned if it was possible to split the zoning on the parcel. Ms. Sinnette said the City does permit this and in fact some of the parcels farther east actually have split zoning on them now. Staff suggests that there be some demarcation or definition of where the line is drawn, which could be the creek channel, the road, or a contour elevation.

Vice Mayor Andersson referred to Parcel 28 and said the map shows it to be almost completely within the ridgeline setback and he questioned its implications. Ms. Sinnette said since the property is totally encumbered by the Class I setback, the City would have to determine the development potential in relationship to a taking, and therefore, there would need to be at least one dwelling unit allowed on the property to avoid this situation. She said there are also specific findings that need to be made.

Mayor Tatzin questioned and confirmed with Ms. Sinnette that residential use was not required under Parcel 28's current zoning and the ridgeline ordinance had no role on the parcel's current zoning. She said both parcels are not currently subject to the hillside regulations because they are not residentially zoned, unless they subdivide or they build residential. She said they could build commercial without complying.

Councilmember Federighi said in the minutes of October 9th staff at that point had not confirmed that the City could accommodate 361 units on RHNA allocations for 2013 within the downtown, and Ms. Srivatsa said this has been confirmed; the City can accommodate RHNA numbers within the downtown.

Vice Mayor Andersson referred to page 3 of 5 of the staff report, Table 2, the third line down for Parcel 27; the maximum allowed density under § 6-2043 shows 14.0 dwelling units, and later on it shows, maximum allowed density for the upper portion is 17 dwelling units. He questioned if this was a discrepancy and if so, what did they mean. Ms. Sinnette said there is no discrepancy; this is something the Planning Commission had asked for. For some reason, if the City allowed a lot split where the upper portion was split from the lower portion, strictly based on the slope that could be the density. But for practical purposes for the entire parcel, the City is looking at 14 dwelling units as potentially being allowed if the property were subject to the hillside ordinance.

The public hearing was opened.

MIKE KIM, referred to Parcel 21, shares the City's views of the town maintaining open space and rural ness, said they purchased the ranch property and worked hard financially to keep it. He noted his memorandum submitted focuses on 3 key points: 1) high price tag of the property when they purchased it last year and the underlying zone value. To downzone the property would be damaging to them; 2) currently, refinancing is difficult; part of the calculation of refinancing is the loan to value ratio which is an impediment to his ability to refinance to a more stable product; and 3) his intention is to never develop the property, but to keep and build upon what the previous ownership has done. In his view, the zoning in place is commensurate and reflective of the value of maintaining open space and low density development, and he did not see any incompatibility as to what the current zoning is.

DAVID BOWIE, representing the Dettmer properties, said when he looked at this topic he was somewhat surprised because at the last October meeting the direction was to work with the applicant with respect to the Dettmer's towards a development agreement. During that time period, they identified a developer with whom they are currently working, are in a position to begin forming a project to bring before the Council in a concrete sense, and there is no reason to consider any kind of down zoning or a general plan amendment and he would not favor this. In part, they are trying to respond to the direction given but also setting aside the more general consideration, which is simply that, in looking at the properties, he cannot think of any reason why down zoning should even be initiated by the City at this particular time. The General Plan calls for the existing zoning. The Housing Element of the General Plan allocates housing units to the Dettmer's properties in part and there is no indicated over-riding state value or interest that anybody has identified which would suggest there is a need for down-zoning at this time. In addition, there is actually been no study whatsoever that has been undertaken to decide what the real constraints of the property might be, what types of environmental consideration should be undertaken and there has been no effort to comply with the State statute that would require the event of a down zoning when units have been allocated to a particular property; that there be findings specifically made that you can otherwise meet all of the unit allocation for affordable housing purposes. There has been nothing of this sort undertaken whatsoever. Under these circumstances, he thinks it would be inappropriate for there to be any kind of reduction in the current zoning and suggest that it be left as is. He said obviously, down zoning has a material economic impact upon his client and just as Mr. Kim noted previously, if the Council were to downzone the two properties, he situation would affectively be an economic taking of virtually all of the value of the property. He noted that in this area, we are not dealing with pristine hilltops but

areas already cut, graded, there are existing plateaus, this is not an area where there is a ridgeline even that extends the way it was originally designed. There are no real types of features that the City puts on its list of priority they are trying to protect. He therefore asked that the Council not move forward with the process at this time because he is prepared to come in with a concrete project and in that context, work out a development agreement, as well.

Councilmember Anderson questioned whether the potential development agreement would be for Parcels 27 and 28. Mr. Bowie said he believes it makes sense to do a development agreement that would involve all of the Dettmer properties. The discussions they have had involve a sale of all of the properties and a master plan of all properties so they can come up with the best uses for these properties consistent with the General Plan and the City's goals.

Mayor Tatzin asked Mr. Bowie to characterize for the Council the nature of the proposed development that was described at their meeting for Parcel 27. Mr. Bowie said Parcel 28 was not specifically discussed and he could not imagine it as a single family residence, but they primarily were interested in Parcel 27. The actual proposal would involve all of the parcels. The interest for Parcel 27 is development of a senior citizens housing project; something that would not necessarily be subsidized but more of a market rate project with an affordable element to it. It would be designed to take care of the needs for people who have lived in Lafayette for many years who would want to live in a smaller, more modern home and still stay in the community.

Mayor Tatzin questioned the part of the lot the project would be proposed to be located on. Mr. Bowie said logically, most of it would go into the area where the current graded plateau is located. He said he drove the area to determine visibility and what could be seen. From lower elevations, there is not much which can be seen because of angles. If an appropriate landscape screening was done across the plateau area, there would be a situation where you could largely render the building invisible. He said an example would be Orinda Woods where there are 8,000 to 12,000 square foot buildings which are screened by vegetation. Because of the site distance issues looking up, when there is a flat plateau, it is much more obscure than a hillside would be and with screening, landscaping, berming and/or excavation, one could end up with a project that would essentially be invisible from all lower viewing elevations. He believe they could come up with an attractive, market driven, high quality, more dense project in that portion of the property that would also serve the housing needs of the Housing Element.

Mayor Tatzin questioned what was proposed for the lower portion of Parcel 27. Mr. Bowie said he believes they would try and do more of a clustered housing and they would be prepared to deed substantial portions of the property into open space. They could address development of all parcels together and as a trade-off for development density, create more open space. There was some general thought that an administrative office building might be appropriate for the former gas station site, which he felt would be an appropriate use for that site.

Councilmember Federighi referred to high quality senior residence and she questioned whether this would be assisted living or independent living. Mr. Bowie said the contemplation of the developer would not be assisted living, but an independent living project primarily directed toward the empty nester Lafayette resident who no longer needs or wants a 3,000 or 4,000 square foot single family residence.

MARTIN LYSONS, representing Ana Maria Dettmer and the Trust, said he submitted a letter on Friday regarding Ms. Dettmer's willingness to move forward with the development agreement. He is in agreement, is of the position that the City is moving this down zoning in a vacuum and supports the notion of a development agreement that will provide them with something specific to

move forward with. Currently, it is a City-initiated application. The City puts itself in this position to be on the hook for the CEQA costs, consultant costs and the costs related to the down zoning in general. Practically, he believed it was better for the City to let a developer come forward with a reasonable development plan for the property, such as the one that is currently in a developmental stage. The consultants can also have a clear direction as to what needs to be studied, given their specific project. The Commission and Council will also have all of the information needed to make an informed decision and they will not have to make a decision in a vacuum. There has been the proposal for the senior housing and again it is in its infant stages, but this is one of the thousands of possible ideas put forth for the various properties. He said Mr. Bowie mentioned clustering, office use for Parcel 28, but these parcels require creative thinking and a blanket action against the wide range of options available would stifle that creativity. He asked the Council to consider not moving forward with any general down zoning unless and until there is a specific proposal that could be brought forward.

Councilmember Anderson said Mr. Lysons indicates the Council is operating in a vacuum, but there was a great deal of study done by the Planning Commission looking particularly at upgrades on Parcel 27 and Parcel 28, and he asked if Mr. Lysons was familiar with those. Mr. Lysons said he was familiar with them, he has been associated with the process for some time, and they did have an opportunity and constraints analysis done for the property; however, it looked more like a constraints analysis. It did not investigate in any detail the possibilities that could be done for the current proposal, such as the clustering or split zoning potential.

GUY ATWOOD said the Spring Hill Board has discussed the property and does support staff recommendation for the General Plan amendment. He believed there were false statements made, said the Council had voted unanimously to change the zoning on the parcels, and interesting to him is that the Council asks for a development plan and there has not been any action on the property. Every plan that comes before the City for the last 10 years indicates it is for senior nesters, and there have not been any senior nesters living in the projects done. The owner wants to combine the properties and somehow achieve more density by combining the properties and using trade-offs between some of the other parcels. He suggested the Council move forward and if the maximum density is 14, the application will need to come in close to that, given some flexibility for clustering; however, he felt the point is that this is all that could be done. The constraints and opportunities analysis was very clear and there is not much which can be done when applying the regulations of the City to the properties. He noted it was also the second worst intersection in the City of Lafayette.

Mayor Tatzin said staff actually did not make a recommendation regarding the General Plan designation for parcels 27 and 28 and asked that Council provide direction. He said Mr. Bowie commented that they have not figured out how to take the housing for the RHNA process elsewhere, and he questioned how many units were allocated to the parcels. Ms. Srivatsa said in the current housing inventory or Housing Element, the properties are not included. She thought Mr. Bowie was referring to the total General Plan build out. City Attorney Subramanian added that therefore, the findings Mr. Bowie mentioned are not required.

DAVID BOWIE said he reviewed the Housing Element from the General Plan on Schedule 23, which refers to the APO properties in terms of the potential allocation of units, which discusses an allocation of 140 units. Ms. Srivatsa said there is a difference between the inventory to show that the City has capacity for their regional housing allocation, which is different from the Table Mr. Bowie refers to, which allocates units for all parcels within the City by zoning district to calculate the general build-out. Mr. Bowie said, however, the Housing Element currently calculates 140

units allocated mostly to the Dettmer property or APO designation. The Government Code requires there be specific findings made by the Council in the event there is a down-zoning.

Mayor Tatzin said if the Council were to proceed with making something other than APO and if that were a requirement that would be part of the process and he believed there would need to be an environmental review. City Attorney Subramanian said correct; this is initiating the proceedings.

Councilmember Anderson believed that the Council wanted this to return to give the property owner an opportunity to work with staff and arrive at something along the lines of the specific plan. He was almost willing to delay the process a bit, but also inclined to move forward on a split zoning on Parcel 27. He felt the city gave the opportunity for the property owners to look at the opportunity to work out something and he has not seen anything yet.

Mayor Tatzin said he believed it had not been a normal period from October through March, and one might argue that perhaps the property owners had not done enough to demonstrate that they were trying to determine how to use the property. He said the last five months it has been harder to get the attention of developers who might otherwise try to salvage projects that are rapidly moving under water or losing their financing. Having said this, it has been years since the Council adopted the hillside ordinance and General Plan and the Council has been split on how intense the development of the parcels should be. He consistently advocated that with respect to the plateau portion of Parcel 27, it is highly visible and difficult to conceal much of anything, and that berming will not work. He is willing to consider more study for the lower portion of Parcel 27, he believed Parcel 28 was very difficult, and with regards to Mr. Kim's property, there are some portions that could be developed at a higher density without having visual impacts, but his preference would be to find a way to address that without creating spot zoning, and he believed parcels farther to the west tend to be more visible.

Vice Mayor Andersson discussed situations where reminder letters are sent and an example of things happening at the eleventh hour. The point made by Mayor Tatzin about the last 5-6 months is valid. His feeling is that the plateau area is not very visible and one could make it much less visible with vegetation. As he looks at the 7 parcels, the Dettmer property is 4 of those parcels. If the Dettmer property were developed as a comprehensive plan, the Kim property could be developed more specifically. He said he would actually be curious to see what kind of development proposal came regarding the properties and would like to provide a little time for this to be developed and hold onto the rezoning for awhile.

Councilmember Federighi said she believes the other Dettmer properties are 10 and 16. She said she is less troubled about a proposal coming to the Council at this point. Discussions were whether or not a development agreement could be feasible, and it sounds as if the property owner wants to look at this. She has mixed feelings about including 10 and 16 with 27 and 28. To her, 27 is different from 10, 16 and 21 partly because of the flatter ground, Pleasant Hill road and the large plateau area. Like Mayor Tatzin, she felt the top portion was quite visible. She remembers seeing trucks parked up there and they could be seen from below; however, she would be willing to look at a plan to see if a one-story development could be concealed from below. If well concealed from below, she would be willing to look at it. Another thought would be to do split zoning on Lot 27. She does not believe LR-10 is appropriate for the upper portion, but rather LR-5.

Councilmember Anderson questioned if staff was recommending moving all at once, assuming under one General Plan Amendment. Ms. Sinnette said yes. The City is going to use an outside consultant to do the environmental review and it would be better to do it all at once.

Councilmember Anderson said he would be willing to give a little more time to let the Dettmer's and staff discuss the proposal prior to taking any action. Vice Mayor Andersson asked for a much more firm proposal.

Mayor Tatzin said assuming there is more discussion, whether it is with the proposed buyer or someone new, he asked at what point the City would be locked into reviewing an application under the current zoning. City Attorney Subramanian said it would occur once the applicant submits a complete application and the current zoning would apply.

Mayor Tatzin said a lot of things we spend time thinking about the hillside ordinance do not apply particularly to Parcel 27 at all, and he questioned whether the Council would want to initiate a split zoning of that parcel as a policy. Ms. Subramanian said the ordinance would apply as a residential use, but if it was an office or commercial use, it would not apply. Mayor Tatzin said to the extent that this is in the upper part of Parcel 27 and in the hillside setback, he questioned how it would be applied. Ms. Sinnette said under the current APO, if the applicant came in with a residential project of any form, the hillside regulation would apply. If they came in with something other than residential but allowed with APO, the hillside regulations would not apply.

Councilmember Federighi said she does not want to see office on the parcel at all. She thinks the Council has said all along that the area should be residential. She was not sure what to do with Parcel 28, but if the Council were to say all properties were LR-10 or LR-5 or some other designation, the disadvantage from the developer's point of view would be that they would have to propose a General Plan Amendment to have a project that would be allowed under that designation. Ms. Sinnette said if staff completed the General Plan and rezoning process, this would be the case. If staff started it tonight and the developer came in with a plan in-between, staff could always bring this forward to the Council because environmental review will take at least two months to conduct. Therefore, this is another possibility. She said the Council could also provide a specific deadline to submit something on the Dettmer property.

Councilmember Federighi said the entire area has been very difficult for the Council for years. At the time the General Plan was adopted, the Council said it would go ahead with the specific plan which turned out to be much more expensive than what we were able to afford. But the Planning Commission spent numerous meetings going over slope/density calculations and other constraints and opportunities. Therefore, she would be willing to hold off longer and see what the proposal comes in as, realizing this is a gateway area and a rural area in the town and any proposal will be well scrutinized.

Mayor Tatzin suggested directing staff to return and set a meeting for planning purposes with a specific proposal to rezone Lots 10 and 16 to LR-10, figure out how to address the unique portion of Lot 21 to accommodate more density, and then potentially do a split zoning on Lot 27, and whatever the Council believes is best for Lot 28. In the meantime, if a proposal comes in, the Council can review it and decide whether to continue that process, but this clearly indicates a direction.

Councilmember Anderson said the council could also begin the process in the next couple of months and the City may see an application or not. Mayor Tatzin believed this was a lower cost approach. Councilmember Federighi questioned what the lower approach was that Mayor Tatzin

wanted for Lot 27. Mayor Tatzin said a lower approach is that something is clearly more visible from Pleasant Hill Road but less visible from the gateway to the community or Highway 24. So, on the upper portion of Lot 27, he would go for an LR zoning and then whether there is proposed either moderate residential density or clustered residential housing on the lower portion might be acceptable. In the meantime, it would stay as it is now.

Councilmember Federighi questioned how soon would the process start, and Mayor Tatzin suggested it return to the Council in June for review and at that time, there might be interest from a developer or property owner, which might cause the Council to abandon another approach. He confirmed it would be for all of the 7 parcels.

Councilmember Anderson preferred going with LR-10 on the split zone on the upper portion of Lot 27 and MRT for some institutional or convalescent homes on the lower section. Councilmember Federighi said she would rather support LR-5 on the upper portion rather than LR-10. Councilmember Anderson said LR-10 is the zoning on all other parcels in the area, but Councilmember Federighi believed Lot 27 was different from the others. Mayor Tatzin said he thought the upper portion was actually more visible. Councilmember Anderson said he would prefer LR-10 on the upper portion.

Ms. Sinnette said on October 9th, the Council directed her to rezone 5 of the parcels, and she questioned if all would be continued to a June date. City Clerk Robbins noted that Councilmember Anduri would not be available for either meeting in June. Ms. Sinnette said when staff returns, a preliminary development proposal might be returned, but regardless of this, she confirmed that the Council wanted a recommendation on zoning from staff on Parcels 27 and 28. Councilmembers believed there was support for split zoning on Parcel 27, but there was disagreement over LR-5 or LR-10 for the upper portion and MRT for the lower portion, and MRT for Parcel 28, as well. Ms. Sinnette noted the split zoning recommended was actually staff's recommendation twice to the Planning Commission.

ACTION: It was M/S/C (Anderson/Andersson) to continue the public hearing and direct staff to return on June 8th to initiate proceedings to amend the General Plan and zoning designations. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

11. CONSENT CALENDAR

ACTION: It was M/S/C (Anderson/Andersson) to convene jointly as the Redevelopment Agency. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

ACTION: It was M/S/C (Anderson/Andersson) to approve Consent Calendar items A, B, C, D, E, F, G, H, I, J, K and L. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

A. City Council Minutes

1. March 9, 2009

Recommendation: Approve.

2. March 16, 2009

Recommendation: Approve.

B. Resolution 2009-16 Ordering the Preparation of a Report Proposing the Levy of Assessments for 2009-2010 for the Core Area Landscaping and Lighting District 1979-1

Recommendation: Adopt Resolution 2009-16.

- C. Resolution 2009-17 Ordering the Preparation of a Report Proposing the Levy of Assessments for 2009-2010 for the Residential Lighting District 1979-2**
Recommendation: Adopt Resolution 2009-17.
- D. Award of Contract for Project Number 014-9672 Stanley Boulevard Sidewalk**
Recommendation: 1) Adopt the project plans, specifications, and project details to conform to the Uniform Construction Accounting Act. 2) Award Stanley Boulevard Sidewalk Project Number 014-9672, construction contract to North Bay Construction in the amount of \$191,357.00.
- E. Award of Contract for Project Number 014-9674 2009 Road and Drain Improvement Project – Part A (Victoria Avenue, Victoria Court, Camino Colorados, Hermosa Court)**
Recommendation: 1) Adopt the project plans, specifications, and project details to conform to the Uniform Construction Accounting Act. 2) Award 2009 Road and Drain Improvement Project Number 014-9674 Part A, construction contract to Grade Tech, Inc. in the amount of \$745,644.
- F. Award of Contract for Project Number 014-9676 Mount Diablo Multi-Purpose Pathway**
Recommendation: 1) Reject the bid protest made by Grade Tech Inc. 2) Adopt the project plans, specifications, and project details to conform to the Uniform Construction Accounting Act. 3) Award Mount Diablo Multi-Purpose Pathway Project Number 014-9676, construction contract to HSR in the amount of \$198,894.00.
- G. Agreement for Installation and Maintenance of Existing and New Landscaping between Temple Isaiah of Contra Costa County and the City of Lafayette, located at 3800 Mt. Diablo Boulevard, APN 241-010-046**
Recommendation: Accept Agreement for Installation and Maintenance of Existing and New Landscaping between Temple Isaiah of Contra Costa County and the City of Lafayette, located at 3800 Mt. Diablo Boulevard, APN 241-010-046 and authorize City Clerk to record.
- H. Stormwater Management Facilities Operations and Maintenance Agreement and Right of Entry between Temple Isaiah of Contra Costa County and the City of Lafayette, located at 3800 Mt. Diablo Boulevard, APN 241-010-046**
Recommendation: Accept Stormwater Management Facilities Operations and Maintenance Agreement and Right of Entry between Temple Isaiah of Contra Costa County and the City of Lafayette, located at 3800 Mt. Diablo Boulevard, APN 241-010-046 and authorize City Clerk to record.
- I. Approval of Minor Subdivision 503-06, 45 Prado Way: Authorization to execute access driveway agreement; authorization to record parcel map, acceptance of open space easement**
Recommendation: 1) Approve the Minor Subdivision 503-06, 45 Prado Way and driveway agreements and authorize the execution of both and recordation of the parcel map. 2) Accept the grant of open space easement and authorize a recordation of the parcel map.
- J. Lafayette's Comments on the Contra Costa Transportation Authority's 2009 Countywide Comprehensive Transportation Plan**

Recommendation: Receive and file.

K. Code Enforcement Activity Report

Recommendation: Receive and file.

Convene Redevelopment Agency

- L. Adjust Redevelopment Agency budget to reflect a payment of \$229,495 to the Education Revenue Augmentation Fund (ERAF) before May 1, 2009 reserving any rights the agency may have to withhold or recover the payment of funds under Health and Safety Code Section 33685 based on any order or judgment of the Court in CRA v. Genest.**

Recommendation: Adjust the Redevelopment Agency budget to reflect a payment of \$229,495 to the Education Revenue Augmentation Fund (ERAF) with reservation of rights to withhold or recover the payment.

Adjourn Redevelopment Agency

ACTION: It was M/S/C (Anderson/Andersson) to adjourn the Redevelopment Agency. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

12. COUNCIL/COMMISSION REPORTS

- A. Councilmember report on activities and consideration of matters a councilmember wishes to initiate for placement on a future agenda.**

Councilmember Federighi reported the Contra Costa Solid Waste Authority Board will meet Thursday and on the agenda are items of interest: Report of the JPA members and how they have done for disposal targets. She reported that Lafayette is on target; our rate of recycling is down slightly, and she asked everyone to remember how important it is. She also said they have a demolition ordinance and will make possible revisions to it in order to make all ordinances uniform and identify sites for builders to bring their concrete.

Ms. Srivatsa said Ms. Sinnette reviews every single recycling receipt to ensure people comply, and the Council thanked her.

Councilmember Anderson said the Council was to discuss ground rules for the upcoming April 13th meeting. He said Ms. Merideth and Mr. Falk guided them through the process, but asked for a recap of the ground rules. Ms. Merideth said meeting would begin at 5:00 p.m., the purpose would be for WRT to make a presentation, background, how the plan evolved, be available to answer question, hold discussion from the committee, and it was agreed that there was no way on April 13th to wrap things up or hold a substantive discussion about issues. The idea would be to hold an all-day meeting on Saturday and the tentative date is May 9th. Mr. Falk said Ms. Merideth believes there will be at least 8-10 major issues and the idea would be that rather than allow the conversation to be swamped with the first issue in the first hour, that the facilitator would be charged with discussing each issue for 45 minutes to one hour and at the end, move onto the next issue. If one issue takes less, another issue could be allocated more time.

Councilmember Federighi urged that the Council receive recommendations from the Advisory Committee, and she confirmed with Ms. Merideth that there would be a meeting on April 1st of the committee and the Council would receive their recommendations. Mr. Falk said the Advisory Committee has been wonderful and spent probably 100 hours and they will have strong

recommendations on all major issues. Planning staff will convene a meeting on April 6th where the entire Planning staff will discuss all 8-10 issues and come up with staff recommendations, as well. Ms. Merideth said the process was really coming together.

Mr. Falk provided an update on the Open Space Committee, and said there are 4-5 applications. He is working on when the group can get together.

B. Resolution 2009-22 Authorizing a Local Match Amount and the City Manager or his Designee to Enter a Contract with Caltrans for its Community- Based Transportation Planning Grant

Recommendation: Adopted Resolution 2009-22. Vote: 4-0-1 (Anduri absent).

ACTION: It was M/S/C (Anderson/Federighi) to adopt Resolution 2009-22; Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

13. WRITTEN COMMUNICATIONS

A. Memo received March 3, 2009 from BB&K regarding new rules effective February 2, 2009 for gifts of tickets and/or passes to public officials.

Recommendation: Discuss and direct staff to prepare a resolution defining a city policy regarding gifts of tickets or passes to public officials.

Ms. Subramanian said staff could return with a policy that is detailed or bring a policy back that states the City's policy is not to accept tickets.

ACTION: Consensus of the Council to direct staff to prepare a resolution defining a city policy regarding gifts of tickets or passes to public officials.

B. Letter dated March 3, 2009 from Donald Anderson, Community Services Director, Lafayette Rotary Club, requesting permission to use Lafayette Plaza on Saturday, April 11, 2009 from 9:45 am to 11:00 am for the Spring Egg Hunt.

Recommendation: Discuss and direct staff.

ACTION: Consensus of the council to allow the Lafayette Rotary Club to use Lafayette Plaza on Saturday, April 11, 2009 from 9:45 am to 11:00 am for the Spring Egg Hunt.

C. Letter dated March 9, 2009 from Jay Lifson, CEO, Lafayette Chamber of Commerce, requesting permission to use Lafayette Plaza for a party for supporters of the TRY LAFAYETTE FIRST program, on Friday, June 5th from 5:00 pm to 8:00 pm and cone off the street in front of Squirrel Coffee Shop at 4:00 pm for set-up.

Recommendation: Discuss and direct staff.

ACTION: Consensus of the Council to allow the Lafayette Chamber of Commerce to use Lafayette Plaza on Friday, June 5, 2009 from 5:00 p.m. to 8:00 p.m. and cone off the street in front of Squirrel Coffee Shop for set-up.

15. ADJOURNMENT

The City Council adjourned at 10:04 p.m. to the next regular City Council Meeting on April 13, 2009

APPROVED:

ATTEST:

Don Tatzin, Mayor

Joanne Robbins, City Clerk